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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,126	10/11/2001	Andrew Dwight Dingsor	RSW919980041US2	9263
36736	7590	06/24/2005	EXAMINER	
DUKE W. YEE YEE & ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			CARDONE, JASON D	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,126

Applicant(s)

DINGSOR ET AL.

Examiner

Jason D. Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-20 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,39 and 41 is/are allowed.
- 6) ☒ Claim(s) 16,17,19,20,38 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is responsive to the Appeal Brief of the applicant, filed on 3/18/05. Claims 16-20 and 38-41 are presented for further examination.

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 112***

3. Claim 38 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 38 discloses a computer program product but the specification does not specifically disclose a program product.

4. Claim 38 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not teach how a computer program product would route packets within different layers.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claim 19 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 19 and 40, dependent upon claims 16 and 18, further defines the packet routing layer as the TCP layer but claims 16 and 18 already disclose a TCP layer.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 38 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim discloses a computer program product. The medium is not tangibly limited to a product that is within and enabled by the specification. Claim 38 is not limited to tangible embodiments. In view of Applicant's disclosure, specification page 23, lines 3-15, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., floppy disk) and intangible embodiments (e.g., communication links). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 16, 17, 19, 20 and 38 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/717,007 and claims 1-6 of copending Application No. 10/713,343. Although the conflicting claims are not identical, they are not patentably distinct from each other because they have similar subject matter

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 16, 17, 19, 20 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Lim et al. ("Lim"), USPN 6,718,550.

13. Regarding claims 16 and 38, Lim discloses a computer comprising:

a plurality of processes, wherein the plurality of processes service a destination address and have process addresses [Lim, col. 9, lines 10-35];

a packet routing layer, wherein the packet routing layer routes packets to the plurality of processes using a destination addresses within the packets [Lim, col. 5, lines 13-37 and col. 9, lines 27-62];

a dispatch layer between a TCP layer and an IP layer, wherein the dispatch layer has a plurality of modes of operation including: a first mode of operation in which the dispatch layer receives a packet from a client, wherein the packet includes the destination address [Lim, col. 6, lines 30-60 and col. 10, lines 1-62];

a second mode of operation, responsive to receiving the packet, in which the dispatch layer identifies a process within the plurality of processes to service the client, wherein the process is an identified process [Lim, col. 7, lines 18-45];

a third mode of operation in which the dispatch layer translates the destination address to a process address for the identified process within the plurality of processes; and a fourth mode of operation, responsive to the third mode of operation, in which the packet is sent to the packet routing layer [Lim, col. 7, lines 37-45 and col. 8, lines 44-61].

14. Regarding claim 17, Lim further discloses a fifth mode which the dispatch layer receives a packet from the identified process for the client and responsive to the fifth mode of operation, in which the dispatch layer translates the source address in the packet of the destination address [Lim, col. 7, lines 37-45 and col. 8, lines 44-61].

15. Regarding claim 19, Lim further discloses the packet routing layer is a transmission control protocol layer [Lim, col. 5, lines 13-37].

16. Regarding claim 20, Lim further discloses the plurality of processes is a plurality of server daemons [Lim, col. 5, lines 38-59].

#### ***Allowable Subject Matter***

17. Claims 18, 39 and 41 are allowed.

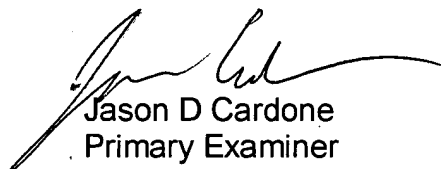
#### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Thu. (6AM-3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (571) 272-6159. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone  
Primary Examiner  
Art Unit 2145

June 22, 2005